

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION**

LABORATORY CORPORATION OF
AMERICA HOLDINGS¹

Employer

and

Case 4–RC–20624

UNITED FOOD AND COMMERCIAL WORKERS
UNION, LOCAL 1358, AFL-CIO²

Petitioner

**REGIONAL DIRECTOR’S DECISION AND
DIRECTION OF ELECTION**

The Employer, Laboratory Corporation of America Holdings, operates clinical testing facilities called Patient Service Centers (PSCs) in various locations throughout the United States. Petitioner, United Food and Commercial Workers Union, Local 1358, AFL-CIO, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of Phlebotomists, Administrative Team Leaders, Technical Team Leaders, and Reference Test Clerks employed by the Employer at the following seven PSCs in southeastern New Jersey: Absecon, Cape May Courthouse, Marmora, Mays Landing, Pleasantville, Somers Point, and Vineland.³ The Employer contends that this unit is inappropriate. The Employer contends that the smallest appropriate unit would encompass all 29 PSCs in its Southern New Jersey Region and would include Drivers and Customer Service Representatives in addition to the classifications sought by the Petitioner. The Petitioner’s proposed unit would consist of about 33 employees, while the Employer’s proposed unit would consist of approximately 165 employees. A hearing officer of the Board held a hearing, and the parties filed briefs with me.

I have considered the evidence and the arguments presented by the parties concerning the appropriateness of the petitioned-for unit. As discussed below, I have concluded that the petitioned-for unit is appropriate for purposes of collective bargaining. Accordingly, I have directed an election in a

¹ The Employer’s name appears as amended at the hearing.

² The Petitioner’s name appears as amended at the hearing.

³ The petition initially included an eighth PSC, in Hammonton, New Jersey, but at the hearing, Petitioner amended the petition to remove this location.

unit of employees who are employed at the seven specified PSCs, and I have excluded Drivers and Customer Service Representatives from the unit.

To provide a context for my discussion concerning the appropriateness of the petitioned-for unit, I will first provide an overview of the Employer's operations. Then, I will review the factors that must be evaluated in determining whether a multi-location unit that is less than company-wide is appropriate for purposes of collective bargaining. Finally, I will present in detail the facts and reasoning that support my conclusion.

I. OVERVIEW OF OPERATIONS

At the PSCs, employees take specimens from patients in order to conduct physician-ordered blood, saliva and urine tests. The Employer also operates testing laboratories in the area and has a number of administrative offices throughout the country, which provide support for the PSCs and laboratories.

The Employer's PSCs are staffed primarily by Phlebotomists, Technical Team Leaders, and Administrative Team Leaders. Phlebotomists take samples from patients, and they also answer telephones, prepare paperwork, and generally assist patients. Technical Team Leaders and Administrative Team Leaders are Phlebotomists who also perform additional administrative duties. The Administrative Team Leaders are the highest-ranking employees at most of the PSCs.⁴ There is also one Reference Test Clerk, who works in the Absecon PSC. She is not trained to draw blood, but she greets patients, inputs information into the computer, and helps maintain the integrity of samples taken for drug screens. Staffing varies at each center, with some PSCs having as few as two employees and others having as many as five.

Harry Bush is the Employer's Director of Operations for its Northeast Division, which extends from Maine to Virginia. Bush has an office in Raritan, New Jersey, which also houses the Employer's main Northeast Division testing laboratory. The Northeast Division is segmented into four smaller subdivisions, each headed by a General Manager. One such subdivision, called the Cloverleaf Division, encompasses southern New Jersey, eastern Pennsylvania, the Eastern Shore of Maryland, and the state of Delaware. Elke Beyer is the Employer's General Manager for the Cloverleaf Division. Her office is located in the Employer's New Castle, Delaware office, which also houses the Human Resources department of the Cloverleaf Division.

Within the Cloverleaf Division are several smaller administrative groupings, including the Southern New Jersey Region, which encompasses 29 PSCs. Michael Boylan is the Director of Field Operations for this Region, and his office is located in Marlton, New Jersey. The 29 PSCs in the Southern New Jersey Region are supervised by four different Phlebotomist Supervisors, each of whom

⁴ No party contends that Administrative Team Leaders are supervisors, and the parties agreed to their inclusion in the unit.

handles a different geographic area. According to Bush, the Employer is presently seeking a fifth supervisor for the Region, in order to reduce the number of employees reporting to each supervisor; therefore, the supervisors' areas of responsibility may be changed.

Phlebotomist Supervisor Lana Gray oversees the seven PSCs sought by the petition, which are located in the southeastern part of New Jersey. In this area, the Absecon, Pleasantville, and Somers Point PSCs each have five employees; Vineland and Cape May Courthouse each have four employees; and Marmora and Mays Landing each have two employees. There are also four Phlebotomists currently serving as "floaters," who work at all seven of these PSCs depending on the needs of the facilities. Each PSC has a reception area, a waiting room for patients, and clinical testing rooms where blood is drawn. The Employer sends the patients' specimens from these PSCs to its laboratory in Raritan, New Jersey for testing.

There are 30 Drivers and three Dispatchers in the Southern New Jersey Region, all supervised by Distribution Supervisor Nancy Messick, who is located in the Marlton, New Jersey office. Drivers pick up and deliver test reports and samples between PSCs, physicians' offices, the Raritan laboratory, and various third-party locations along specific routes. Some of them primarily handle trips to PSCs while others mostly visit doctor's offices and hospitals.

The 11 Customer Service Representatives in the Southern New Jersey Region are supervised by Customer Service Supervisor Stephanie Morriset, and they are all located in a single room at the Marlton office. They respond to questions from PSC employees, doctors, and patients concerning billing or test results and handle various clerical tasks. If there is a problem with a patient's sample, a Customer Service Representative will communicate with employees at the PSCs about taking additional specimens. Gray has no supervisory authority over Drivers or Customer Service Representatives.

II. FACTORS RELEVANT TO DETERMINING WHETHER THE PETITIONED-FOR UNIT IS APPROPRIATE FOR COLLECTIVE BARGAINING

The Act does not require that a unit for bargaining be the only appropriate unit or even the most appropriate unit. Rather, the Act requires only that the unit be *an* appropriate unit. *Overnite Transportation Co.*, 322 NLRB 723 (1996); *P.J. Dick Contracting, Inc.*, 290 NLRB 150 (1988); *Morand Bros. Beverage*, 91 NLRB 409, 418 (1950), *enfd.* 190 F.2d 576 (7th Cir.1951). Thus, the Board's procedure for determining an appropriate unit under Section 9(b) is first to examine the petitioned-for unit. If that unit is appropriate, then the inquiry ends there. *Bartlett Collins Co.*, 334 NLRB No. 76 (2001). See *Dezcon, Inc.*, 295 NLRB 109, 111 (1989).

Ordinarily when considering a multi-facility operation, the Board holds that a single location unit is presumptively appropriate for collective bargaining. *J&L Plate, Inc.* 310 NLRB 429 (1993); *Bowie Hall Trucking*, 290 NLRB 41, 42 (1988). However, that presumption is inapplicable where the

petitioning union seeks to represent a multi-facility unit. *Hazard Express, Inc.*, 324 NLRB 989 (1997); *Capital Coors Co.*, 309 NLRB 322, n. 1 (1992). In a multi-facility context, absent the presumption of appropriateness, the Board evaluates whether the employees at the respective facilities possess a sufficient community of interest to warrant their inclusion in a single bargaining unit by considering the following criteria: (a) similarity in employee skills, duties and working conditions; (b) functional integration; (c) centralized control of management and supervision; (d) geographical separation of facilities; and (e) bargaining history. *Bashas', Inc.*, 337 NLRB No. 113 (2002); *Alamo Rent-A-Car*, 330 NLRB 897 (2000); *Macy's West Inc.*, 327 NLRB 1222, 1223 (1999); *Bowie Hall Trucking*, 290 NLRB 41, 42 (1988).

III. FACTS

The Employer's labor relations policies emanate from its corporate headquarters in Burlington, North Carolina, and consequently the employees at the seven PSCs encompassed by the petition, as well as at the Employer's other PSCs in the Southern New Jersey Region, enjoy the same benefits and working conditions. They are all paid on an hourly basis and are governed by the same employee handbook. Employees also have similar lunch and break times. Personnel files for all Southern New Jersey Regional employees are maintained by the Employer's Human Resources department in New Castle, Delaware, although supervisors at each PSC also maintain files for each employee concerning attendance and leave matters.

Gray is based in the Absecon PSC, but she regularly visits each PSC in her area, and she provides employees with day-to-day directions as needed.⁵ A Technical Team Leader at the Somers Point PSC testified that she interacts with Gray on a near daily basis, either in person or by telephone, with reference to matters such as supplies, patient issues, and leave and scheduling questions. No other supervisor has direct authority over employees in these seven PSCs. Gray oversees employee performance and independently approves vacation requests, other types of leave requests, and overtime. She also prepares employee evaluations, and in conjunction with the evaluations, recommends merit pay increases. She may issue disciplinary warnings without approval, but she must consult with higher authority concerning more severe levels of discipline. When a position is available in one of Gray's PSCs, she forwards all applications to the corporate Human Resources department, and a Human Resources representative conducts an initial telephone screening of the applicant. Gray then interviews the pre-screened candidates, personally tests their skills, and recommends to the Human Resources department whether the applicant should be hired. If a current employee of the Employer applies for a different position in the area, such as a Phlebotomist applying for a Team Leader position, a Human Resources representative may participate in the interview by telephone, while Gray meets with the applicant face-to-face. Gray's hiring recommendations are generally accepted, but on at least two occasions Human Resources did not follow these recommendations. The Human Resources department sets the employees' starting wages.

⁵ The parties stipulated that Gray is a supervisor within the meaning of Section 2(11) of the Act.

Gray conducts quarterly employee meetings that are attended only by employees in her area.⁶ Gray distributes company-wide directives to employees in her PSCs on such subjects as time cards and patient sign-in sheets, but she also issues memoranda at her own initiative to employees in her area concerning such matters as the use of “special care” rooms for patients, overtime, and the scheduling of meetings, among other things. Gray independently prepares weekly work schedules and orders office supplies for employees in her seven PSCs.

Employees commonly transfer between PSCs in their areas, to work closer to home, for example, or to change from a floater position to a regular site. Two employees of the Hammonton, New Jersey PSC, which is supervised by Darlene Hines, each work in Gray’s area once per month, on a designated Saturday, because the Hammonton PSC is closed on Saturdays. Gray also assigns an employee in her area to work at Hammonton when it is short staffed. The Hammonton PSC had been part of Gray’s area until it was shifted to Hines in about June 2002. Aside from the Hammonton PSC, there has been only one instance when someone under Gray’s supervision worked outside her area.

All of the Employer’s employees receive training throughout their employment. New employees are trained at the PSCs where they work. A Vineland PSC employee under Gray’s supervision regularly trains employees in the area how to perform drug-screening tests, and the employees report to the Vineland PSC for this training. Some training sessions – for drug screening, data coding, and Technical Team Leaders’ functions – have involved employees from different supervisory areas within the Cloverleaf Division, but all other training is limited to the employee’s supervisory area.

Phlebotomists and Reference Test Clerks are paid on an hourly scale that ranges from \$9.52 to \$18.61. Technical Team Leaders and Customer Service Representatives are paid from \$11.03 to \$21.59. Administrative Team Leaders are paid from \$12.80 to \$25.04. Drivers are paid from \$8.21 to \$16.04, and Dispatchers are paid from \$9.52 to \$18.61.

Approximately 25 miles separates the two most distant PSCs under Gray’s supervision, Vineland and Cape May Courthouse, and most of the seven are within 10 miles of each other. In contrast, the two most distant PSCs in the Southern New Jersey Region, Hazlet and Cape May Courthouse, are separated by more than 100 miles.

There is no bargaining history for any of the employees in the petitioned-for unit. In 1997, the Employer and Service Employees International Union Local 455 stipulated to a unit of Phlebotomists, Drivers, Technicians, Customer Service Representatives, Clerk Typists, Supply Clerks, Data Entry Clerks, and General Clerks employed by the Employer at 11 PSCs, including six of the seven PSCs in the petitioned-for unit in this case.⁷ At the subsequent election, the employees did not vote for union

⁶ The only exception was a single meeting in January 2003 that was also attended by employees supervised by Darlene Hines.

⁷ The only PSC currently in Gray’s area that was not included in that voting unit was Vineland. After 1997, the Ocean City PSC was closed, and the Pomona PSC was merged into the Absecon PSC. The Atlantic City and Linwood PSCs no longer exist, but the record does not indicate what happened to them.

representation. At the time, the Employer's organizational structure in Southern New Jersey consisted of three units, and the 11 PSCs in question comprised the Pleasantville Unit.

Since 1997, the Employer has made some significant administrative changes. The Employer consolidated the customer service and driving operations for the entire Southern New Jersey Region and reduced the number of supervisors for the area. The Employer also eliminated the Supply Clerk, Data Entry Clerk, and General Clerk positions and created the Reference Test Clerk position. The Employer has also closed or consolidated several of the PSCs that were part of the Pleasantville Unit. Other than Hammonton, the petitioned-for PSCs are the only ones within the Petitioner's jurisdiction.

There are four Drivers who have some interaction with the PSCs in Gray's area. Two of them pick up test reports and route schedules daily from the Somers Point PSC. One of these Drivers also picks up patient specimens at the Cape May Courthouse and Marmora PSCs. The other two Drivers pick up specimens at the other PSCs in the area, and also travel to PSCs in other areas. The Drivers spend an average of 10 to 15 minutes daily at each PSC, generally waiting to pick up specimens or other items. Occasionally, a Driver may spend up to an hour at a PSC if the item is not ready on time. Additionally, male Drivers are sometimes asked to observe a male patient provide a urine sample. Otherwise, Drivers do not share duties with employees at the PSCs, and they have never attended Gray's quarterly employee meetings. Drivers do not work the same hours as the employees in the PSCs, and they seldom interact with patients. One Driver has transferred to a Phlebotomist position, but during the last 10 years, no other employees have transferred between Driver and Phlebotomist positions. The 11 Customer Service Representatives in the Southern New Jersey Region speak to PSC employees by telephone, but rarely have face-to-face contact with them.

III. ANALYSIS

I find that the employees in the seven PSCs under the supervision of Lana Gray enjoy a distinct community of interest and that the petitioned-for unit is appropriate for the purposes of collective bargaining. The seven PSCs constitute a recognized administrative grouping in which Gray has significant autonomy in supervising the employees. She visits all of the PSCs regularly, gives employees day-to-day direction, evaluates their performance, issues them minor discipline, and approves their leave requests. Gray also is instrumental in determining hiring and merit pay increases for employees in her area.

The employees in the PSCs under Gray possess similar skills and work under similar conditions in essentially the same job classifications. The fact that employees at the other PSCs in the Southern New Jersey Region also share these characteristics does not detract from the community of interest of the employees in the seven PSCs.

The seven PSCs in Gray's area are relatively close in proximity, with most of them less than 10 miles from each other. The farthest distance between any two of the seven facilities is 25 miles, while other PSCs in the Southern New Jersey Region are as much as 100 miles apart. There is minimal

interchange between employees in Gray's area and areas within the purview of other supervisors. Employees under Gray's supervision, including the floaters, may work in different PSCs at times, but only in Gray's area. Employees from different PSCs within Gray's area also interact with each other at quarterly meetings, training sessions, and Christmas parties. The limited interaction with some employees in the Hammonton PSC is an anomaly because until recently the Hammonton PSC was under Gray's supervision, and the interchange is largely a result of an accommodation for two employees to continue to work weekend hours.

There is no collective-bargaining history for the employees sought by the petition. Although the petitioned-for unit is similar to the Pleasantville Unit that was stipulated as appropriate in 1997, there was no Board finding as to its appropriateness, and the Board therefore is not bound by the stipulation. See *Mid-West Abrasive Company*, 145 NLRB 1665, 1667 (1964).

The fact that the Employer expects to hire an additional supervisor in the Southern New Jersey Region and reorganize some of the PSCs in the Region does not compel a broader unit finding. Thus, the record does not show that the supervisory boundaries are so fluid and unstable as to preclude meaningful collective at this time in the petitioned-for unit. See *Burlington Food Store Inc.*, 235 NLRB 205 (1978) (area unit inappropriate where there were frequent changes in store assignments among area supervisors, but district unit appropriate where district boundaries changed occasionally, but were considerably more stable than area boundaries). Rather, the petitioned-for unit corresponds to the Employer's current administrative structure, and I find that the employees in the seven petitioned-for PSCs possess a sufficient community of interest to constitute an appropriate unit. *Capital Coors Co.*, 309 NLRB 322, (1992); *L'Eggs Products, Inc.*, 236 NLRB 354, 412-415 (1978); *White Cross Discount Centers, Inc.*, 199 NLRB 721 (1972).

The Drivers and Customer Service Representatives do not share a community of interest with employees in the unit. There is no substantial interaction between Drivers or Customer Service Representatives and employees at the PSCs, and there is minimal job overlap, at most, between them. Drivers and Customer Service Representatives also do not share supervision with employees at the PSCs. See *Deposit Telephone Co., Inc.*, 328 NLRB 1029, 1031 (1999).⁸ Accordingly, I find that Drivers and Customer Service Representatives are excluded from the unit. *Home Depot USA, Inc.*, 331 NLRB 1289 (2000); *Pacemaker Mobile Homes*, 194 NLRB 742, 743 (1971).⁹

IV. CONCLUSIONS AND FINDINGS

⁸ The fact that male Drivers occasionally assist Phlebotomists by policing urine tests is not very significant in comparison to the factors that weigh against a finding that the groups do not share a community of interest. *Macy's West, Inc.*, 327 NLRB 1222, 1223 (1999).

⁹ *National Health Laboratories, Inc.*, 239 NLRB 213 (1978) and *Damon Medical Center*, 234 NLRB 387 (1978), cases relied on by the Employer, are clearly distinguishable. In both of those cases, the Board found petitioned-for units limited to drivers to be inappropriate where the drivers had "frequent and varied work contacts" and an "overlap of job functions and responsibilities," with other classifications, factors that are not present in this case. In *Damon*, moreover, unlike this case, the drivers were commonly supervised with other classifications.

Based upon the entire record in this matter and for the reasons set forth above, I conclude and find as follows:

- 1) The hearing officer's rulings made at the hearing are free from prejudicial error, and are hereby affirmed.
- 2) The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in this case.
- 3) Petitioner claims to represent certain employees of the Employer.
- 4) A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
- 5) The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time Phlebotomists, Administrative Team Leaders, Technical Team Leaders, and Reference Test Clerks employed by the Employer in the following Patient Service Centers: Absecon, Cape May Courthouse, Marmora, Mays Landing, Pleasantville, Somers Point, and Vineland, New Jersey, excluding Drivers, Customer Service Representatives, all other employees, office clerical employees, guards and supervisors as defined in the Act.

V. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for the purposes of collective bargaining by the United Food and Commercial Workers Union, Local 1358, AFL-CIO. The date, time, and place of the election will be specified in the Notice of Election that the Board's Regional Office will issue subsequent to this Decision.

A. Eligible Voters

The eligible voters shall be unit employees employed during the designated payroll period for eligibility, including employees who did not work during that period because they were ill, on vacation, or were temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, employees engaged in an economic strike which commenced less than 12 months before the election date, who have retained their status as strikers but who have been permanently replaced, as well as their

replacements are eligible to vote. Employees who are otherwise eligible but who are in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are 1) employees who have quit or been discharged for cause after the designated payroll period for eligibility, 2) employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and 3) employees engaged in an economic strike which began more than 12 months before the election date who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within **7** days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the **full** names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, One Independence Mall, 615 Chestnut Street, Seventh Floor, Philadelphia, Pennsylvania 19106 on or before **May 9, 2003**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (215) 597-7658. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on non-posting of the election notice.

VI. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5:00 p.m. EDT on **May 16, 2003**.

Signed: May 2, 2003

at Philadelphia, PA

/s/

DOROTHY L. MOORE-DUNCAN
Regional Director, Region Four

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